2. Carriers (§ 314*)—Injury to Passengers Alighting—Complaint.—The complaint of a passenger for injuries in alighting, her coach being stopped beyond the station platform, and she being required to alight, where the ground was rough and 30 inches below the lowest step of the coach, no steps or aid by the conductor being furnished, held to state a good cause of action.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1260, 1270, 1273, 1274, 1276-1280; Dec. Dig. § 314.* 2 Va.-W. Va. Enc. Dig. 700, 721.]

3. Damages (§ 52*)—Fright as Ground of Recovery.—Fright, unaccompanied by personal injury, from mere negligence, is not ground for recovery.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 100, 255; Dec. Dig. § 52.* 4 Va.-W. Va. Enc. Dig. 196.]

Error to Circuit Court, Bedford County.

Action by one Tinsley against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

Harrison & Long, of Lynchburg, for plaintiff in error.
Wm. K. Allen, of Amherst, for defendant in error.

BROWN *v.* CAROLINA C. & O. RY. CO.

Sept. 7, 1914.

[82 S. W. 733.]

1. Motions (§ 59*)—Final Order—Setting Aside.—Where a final order of dismissal is made in vacation, the court at a subsequent term has no authority to reopen the case and set aside the order.

[Ed. Note.—For other cases, see Motions, Cent. Dig. §§ 73-81; Dec. Dig. § 59.* 4 Va.-W. Va. Enc. Dig. 708.]

2. Process (§§ 28, 37, 163*)—Writs—Validity.—A summons which does not run in the name of the "commonwealth of Virginia," or which is not attested by the clerk of the court, as required by Const. 1902, § 106 (Code 1904, p. ccxxxvi), is void and cannot be amended.

[Ed. Note.—For other cases, see Process, Cent. Dig. §§ 22, 32, 224-238; Dec. Dig. §§ 28, 37, 163.* 12 Va.-W. Va. Enc. Dig. 1025.]

3. Appeal and Error (§§ 66, 344*)—Writ or Error—Time—Final Order.—On August 21, 1912, the court made a vacation order quashing the service of a summons because not signed or attested by the clerk, as required by Const. 192, § 106 (Code 1904, § 106 (Code 1904, p. ccxxxvi), and on September 26th overruled a motion to set aside the former order of dismissal. More than a year after the entry

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of the vacation order, plaintiff sued out a writ of error. Held, that if the vacation order was final, the writ of error was too late, and, if not final, then neither was the order denying the motion to set it aside, and was therefore insufficient to sustain the writ of error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 329-331, 335-343, 1889-1893, 1896; Dec. Dig. §§ 66, 344.* 12 Va.-W. Va. Enc. Dig. 125.]

Error to Circuit Court, Scott County.

Action by one Brown against the Carolina, Clinchfield & Ohio Railway Company. A judgment was rendered dismissing the suit, and plaintiff brings error. On motion to dismiss. Granted.

John Kee and *Russell S. Ritz,* both of Bluefield, W. Va., for plaintiff in error.

S. H. Bond, of Gate City, and *Walter H. Robertson,* of Johnson City, Tenn., for defendant in error.

MATNEY et ux. *v.* BARNES et al.

Sept. 7, 1914.

[82 S. E. 801.]

1. Specific Performance (§ 97*)—Contract or the Sale of Land—Bill.—Where a bill for specific performance of a contract for the sale of land at a specified price per acre alleged that the price was to be paid when the land was surveyed under the direction of a competent engineer at the expense of the purchaser, the sellers to furnish an abstract and tender a deed, but that they refused to permit the land to be surveyed, declin d to furnish the abstract of title, and refused to execute and deliver a deed, and that complainants had carried out all the terms and conditions of the contract on their part save such as they were prevented from performing by defendants, and were ready, able, and anxious to perform, the bill was not demurrable because no offer nor tender had been made by complainants to comply with their part of the contract.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 286-298; Dec. Dig. § 97.* 12 Va.-W. Va. Enc. Dig. 645.]

2. Specific Performance (§ 97*)—Conditions Precedent—Tender of Purchase Price.—Where a contract for the sale of land at a specified price per acre provided that the land should be surveyed to ascertain the amount due, but the vendors refused to permit a survey, the purchasers were thereby excused from tendering the purchase price as a condition precedent to the right to sue for specific performance.

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.